

U.S. DISTRICT COURT
N.D. OF N.Y.
FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK
ALBANY DIVISION

APR 23 2008

TERENCE J. SAERMAN CLERK
ALBANY

UNITED STATES OF AMERICA,

Plaintiff,

v.

NEW YORK STATE DEPARTMENT OF
CORRECTIONAL SERVICES,

Defendant.

Civil Action No. 1:08-cv-426

(LEK/DRH)

SETTLEMENT AGREEMENT

This matter is before the Court for entry of this Settlement Agreement agreed to by plaintiff United States of America ("United States") and defendant New York State Department of Correctional Services ("NYSDOCS") with the purpose of effectuating as final a compromise and settlement of all claims raised in the United States' complaint. After review and consideration, the Court believes that entry of this Settlement Agreement is in the interest of justice.

1. Plaintiff United States commenced this action in the United States District Court for the Northern District of New York, Albany Division, alleging that defendant New York State Department of Correctional Services violated the Uniformed Services Employment and Reemployment Rights Act of 1994 ("USERRA") by failing or refusing to credit Patrick J. Anson with Correction Sergeant seniority, status and compensation dating back to July 15, 2002 when NYSDOCS promoted Anson to Correction Sergeant, and failing or refusing to provide Anson with the opportunity to take a make-up examination for the Correction Lieutenant written examination that was administered by NYSDOCS on June 14, 2003.

- 2 -

2. As a result of settlement discussions, the United States and NYSDOCS have resolved their differences and have agreed that this action should be settled by entry of this Settlement Agreement ("Agreement"). It is the intent of the parties that this Agreement be a final and binding settlement in full disposition of any and all claims arising out of USERRA Case No. 02-NY-2004-000019-20-V that are alleged or that could have been alleged against the State of New York or NYSDOCS or its current, former, and future officials, employees, agents, and successors in the Complaint filed in this case. This Agreement is being entered with the consent of the parties and shall not constitute an adjudication or finding on the merits of the case or be construed as an admission by NYSDOCS of any violations of USERRA, or any other law, rule or regulation, dealing with or in connection with equal employment opportunities. By his signature to this Agreement and the accompanying release, attached hereto as Appendix A, Anson agrees that the relief provided in this Agreement is a satisfactory resolution of his claims in USERRA Case No. 02-NY-2004-000019-20-V and the Complaint filed in this case, and adequately compensates him for those claims.

STIPULATIONS

3. Pursuant to USERRA, the parties acknowledge the jurisdiction of the United States District Court for the Northern District of New York (Albany Division) over the subject matter of this action and of the parties to this case for the purpose of entering this Agreement and, if necessary, enforcing this Agreement.

4. Venue is proper in this district for purposes of this Agreement and any proceedings related to this Agreement. All conditions precedent to the institution of this lawsuit have been fulfilled.

- 3 -

5. NYSDOCS has granted Anson the level of seniority, status and compensation that he would have enjoyed had the State of New York properly calculated his Civil Service permanent appointment date to Correction Sergeant and NYSDOCS determined his contract seniority date after the make-up examination for the position of Correction Sergeant. His seniority date as Correction Sergeant has been adjusted to July 15, 2002 and NYSDOCS has paid Anson \$16,611.88 in backpay and a military stipend. Of such amount, Anson is responsible for payment of all employee income taxes. NYSDOCS is separately responsible for paying all applicable federal, state, and local employer taxes. NYSDOCS and Anson will provide to the other the appropriate tax-related documents.

FINDINGS

6. Having examined the terms and provisions of the Agreement and based on the pleadings, records, and stipulations of the parties, the Court finds the following:

- a. The Court has jurisdiction over the subject matter of this action and the parties to this action.
- b. The terms and provisions of this Agreement are lawful, fair, reasonable and just. The rights of NYSDOCS and Anson are protected adequately by this Agreement.
- c. This Agreement conforms with the Federal Rules of Civil Procedure and USERRA, and is not in derogation of the rights and privileges of any person.
- d. The entry of this Agreement will further the objectives of USERRA and other applicable law, and will be in the best interests of the parties.

- 4 -

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

NON-RETALIATION

7. NYSDOCS shall not take any action against Anson or any person which constitutes retaliation or interference with the exercise of such person's rights under USERRA, or because such person gave testimony or assistance or participated in any manner in any investigation or proceeding in connection with this case.

REMEDIAL REQUIREMENTS

8. Within ten days of the entry of this Agreement, Anson shall contact Scott DeFruscio, Chief of Staffing Services Representative, at the New York State Department of Civil Service to schedule a make-up promotional examination for the Correction Lieutenant examination that was administered on June 14, 2003. Within 10 calendar days of Anson's request, DeFruscio shall provide Anson with all examination preparation materials normally available to those preparing for this promotional examination, and shall administer the examination on a date and at a time that is mutually agreed upon between Anson and DeFruscio and that is between 30 and 60 calendar days of Anson's request. If Anson passes the make-up examination, his name will be interfiled in rank order on the eligible list that resulted from the June 14, 2003 Correction Lieutenant examination. If Anson's score is as high as any individual promoted to Correction Lieutenant from the June 14, 2003 Correction Lieutenant examination, NYSDOCS shall grant Anson the level of contract seniority, status and compensation in the Correction Lieutenant position that Anson would have received had the State of New York properly offered him a make-up examination and then properly applied his examination score

- 5 -

and contractual seniority date as Correction Sergeant. The proper seniority date as a Correction Lieutenant shall be equivalent to the date on which NYSDOCS promoted to Correction Lieutenant any other Correction Sergeant who had the same score as Anson achieves and who had equal or lesser contractual seniority. If Anson achieves a unique score, Anson will have the same level of seniority as the individual with the highest seniority rights with the score immediately below Anson's. Anson's score on the make-up promotional examination shall be calculated within 10 calendar days of the examination and any appropriate seniority, status and compensation shall be provided by NYSDOCS within 20 calendar days of the scoring of the examination.

DISPUTE RESOLUTION AND COMPLIANCE

9. The Court shall retain jurisdiction over this case for the term of this Agreement and shall have during that period all available equitable powers, including injunctive relief, to enforce this Agreement. Upon motion of either party, the Court may schedule a hearing for the purpose of reviewing compliance with this Agreement. The parties shall engage in good faith efforts to resolve any dispute concerning compliance prior to seeking review by the Court. The parties shall be required to give notice to each other ten business days before moving for review by the Court. All parties may conduct expedited discovery under the Federal Rules of Civil Procedure for the purpose of determining compliance with this Agreement or defending against a claim of non-compliance.

MISCELLANEOUS

10. All parties shall bear their own costs and expenses of litigation, including attorneys' fees.

- 6 -

11. The relief provided in this Agreement is specific to the facts of Anson's situation and this case and should not be used as precedent in future matters. Nothing in this paragraph relieves NYSDOCS from fulfilling its obligations under USERRA.

12. This Agreement constitutes the entry of final judgment within the meaning of Rule 54 of the Federal Rules of Civil Procedure on all claims asserted in or that could have been asserted by the United States in this action. The Court retains jurisdiction during the term of this Agreement over this matter, however, for the purpose of entering appropriate orders interpreting and enforcing this Agreement.

13. If any provision of this Agreement is found to be unlawful, only the specific provision in question shall be affected and the other provisions will remain in full force and effect.

14. The terms of this Agreement are and shall be binding upon the present and future owners, officers, directors, employees, creditors, agents, trustees, administrators, successors, representatives, and assigns of NYSDOCS and upon the heirs, successors, and assigns of Anson.

15. This Agreement constitutes the entire agreement and commitments of the parties. Any modifications to this Agreement must be mutually agreed upon and memorialized in a writing signed by NYSDOCS and the United States.

EFFECTIVE DATE

16. The effective date of this Agreement shall be the date upon which it is entered by the Court.

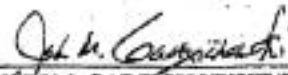
17. This Agreement shall expire, and this action shall be dismissed, without further order of this Court one year from the date of entry of this Agreement. The United States may

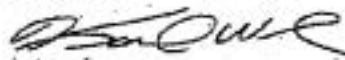
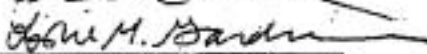
- 7 -

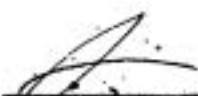
move, for good cause, to extend the Agreement if the remedial relief called for herein with respect to Anson has not been effectuated. Any such extension may be granted by the Court for such time as is necessary to effectuate the relief set forth in this Agreement.

APPROVED and ORDERED this 23rd day of April, 2008.


UNITED STATES DISTRICT JUDGE


JOHN M. GADZICHOWSKI (WI Bar No. 1014294)
Acting Chief



KAREN WOODARD (MD Bar - no bar number)
Deputy Chief
LESLIE M. GARDNER (CA Bar No. 228693)
Senior Trial Attorney
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section
950 Pennsylvania Avenue, NW
Patrick Henry Building, Room 4038
Washington, DC 20530
Telephone: (202) 305-3179
Facsimile: (202) 514-1105


JEFFREY M. DVORIN
Assistant Attorney General
New York State
Office of the Attorney General
Justice Building, Room 355
Albany, NY 12224
Telephone: (518) 473-7614
Facsimile: (518) 473-1572


PATRICK J. ANSON

- 8 -
APPENDIX A
RELEASE OF ALL CLAIMS

STATE OF NEW YORK)
) ss:
COUNTY OF ONEIDA)

For and in consideration of my acceptance of the relief, or any part of it, to be provided to me pursuant to the provisions of the Settlement Agreement I have signed and that is to be entered in the case of United States of America v. New York State Department of Correctional Services, to be filed in the United States District Court for the Northern District of New York, Albany Division, I, Patrick J. Anson, hereby forever release and discharge the state of New York and Defendant in this case, NYSDOCS, as well as their current, former, and future officials, employees, agents, and successors from all legal and equitable claims arising out of the Complaint to be filed in this action and USERA Case No. 02-NY-2004-000019-20-V filed with the United States Department of Labor.

I understand that the relief to be provided to me by NYSDOCS under the terms of the Settlement Agreement does not constitute an admission by any of the parties hereby released of the validity of any claims raised by me, or on my behalf. I further understand that NYSDOCS expressly denies having violated any of my legal rights and that the payments and other terms and conditions set forth in this release are in settlement of disputed claims.

This release constitutes the entire agreement between NYSDOCS and me, without exception or exclusion.

I acknowledge that a copy of the Settlement Agreement in this action has been made available to me for my review.

I HAVE READ THIS RELEASE AND UNDERSTAND THE CONTENTS THEREOF AND I EXECUTE THIS RELEASE OF MY OWN FREE ACT AND DEED.

Signature: *Patrick J. Anson*
Patrick J. Anson

Date: 4-10-08

Subscribed and sworn to before me this 10 day of April, 2008

[Signature]
Notary Public

My Commission expires:

JOSEPH A. BANCROFT
Notary Public
No. 01-1-00001
County of Oneida, State of NY
My Commission Expires 1/1/2010